

1 non-responsive.

2 MR. ROMNEY: Your Honor, I think that's exactly  
3 what she asked for.

4 JUDGE STEINBERG: Your question was --

5 MS. LANCASTER: Is it his testimony that the radio  
6 business in Dallas is not competitive. That's a yes or no.  
7 Yes, it's competitive; no, it's not competitive.

8 JUDGE STEINBERG: Why don't you answer it yes or  
9 no. In your opinion.

10 BY MS. LANCASTER:

11 Q In your opinion, is there a lot of competition for  
12 radio business in the Dallas area?

13 A Yes.

14 Q As a matter of fact, there is so much competition  
15 for radio business that you can't even tell us the name of  
16 this big customer that you were wooing in 1995 and evidently  
17 is now your customer because you are afraid for that to be  
18 publicly known. Isn't that true? Yes or no, please.

19 A If it's too big to be publicly known? I do not  
20 desire it to be publicly known.

21 Q Well, who is the customer?

22 A If I tell you that, it will be publicly known.

23 Q That's right. And you don't want your competitors  
24 to know who your customer is, right?

25 A I don't want my customer to be bombarded by

1 everybody in the world telling them about what's happening  
2 and this is what we can do for you and forget about  
3 Metroplex.

4 Q You don't want to lose that customer. Isn't that  
5 correct?

6 A I don't want that customer to be --

7 Q Yes or no, Mr. Brasher.

8 MR. ROMNEY: Objection, Your Honor.

9 JUDGE STEINBERG: No, I think it calls for a yes  
10 or no.

11 THE WITNESS: State the question again.

12 BY MS. LANCASTER:

13 Q You don't want to lose that customer. Isn't that  
14 correct?

15 A That's true.

16 Q And you're worried that if you say the name of  
17 that customer, your competitors will try to take that  
18 customer away from you.

19 A There is a potential.

20 Q Is that a yes?

21 A I don't know. I don't know what my competitors  
22 would do.

23 Q I said you are worried that your competitors would  
24 try to take that customer. Isn't that true?

25 A Yes, that would be true.

1           Q     And that's why you don't want the name of the  
2 customer known.

3           A     If you insist on knowing it, I'll go ahead and  
4 tell you.

5           JUDGE STEINBERG: I don't want to know.

6           BY MS. LANCASTER:

7           Q     I don't insist on knowing it, Mr. Brasher, but  
8 I want you to state isn't it that the reason you don't want  
9 to tell it, because you are worried about the competition i  
10 the Dallas area for radio business?

11          A     Yes, that would be an answer.

12          Q     It's a very competitive area, isn't it?

13          A     It's a competitive area.

14          JUDGE STEINBERG: Let me interject, when you were  
15 in the business, did you have salesmen?

16          THE WITNESS: Yes, sir.

17          JUDGE STEINBERG: And did the salesmen make sales  
18 calls?

19          THE WITNESS: Yes, sir.

20          JUDGE STEINBERG: So they went out to businesses  
21 and said these are the services we can provide you, are you  
22 interested?

23          THE WITNESS: Yes, sir.

24          JUDGE STEINBERG: Okay. We mentioned concrete,  
25 we mentioned gravel, we mentioned wrecking companies.

1 THE WITNESS: Yes, sir.

2 JUDGE STEINBERG: Taxicabs?

3 THE WITNESS: No taxicabs.

4 JUDGE STEINBERG: The DASH bus -- not DASH,  
5 whatever the Dallas --

6 MR. PEDIGO: DART bus.

7 JUDGE STEINBERG: DART bus. DASH is Alexandria.  
8 And the airport authority. Let's say like a concrete  
9 company, there's a concrete company around here called  
10 Cardinal Concrete, I think, and presumably -- I don't know,  
11 but just assume for the purposes of my question that they  
12 use these things, these radios, two-way radios.

13 THE WITNESS: Yes, sir.

14 JUDGE STEINBERG: And I still don't know what they  
15 do, but that's beside the point, did you ever send a  
16 salesman to a business and try to persuade that business to  
17 use your services?

18 THE WITNESS: We did not make that an objective to  
19 switch people from one place to another place.

20 JUDGE STEINBERG: So if you send somebody to  
21 Cardinal Concrete and Cardinal Concrete -- you could  
22 substitute any name that you sent people to --

23 THE WITNESS: Yes, sir.

24 JUDGE STEINBERG: And they told you we're with  
25 Action Radio and we're very happy with Action Radio, did

1 your salesmen, to your knowledge, did they just say, well,  
2 thank you very much, and leave?

3 THE WITNESS: That's correct. That was our  
4 policy.

5 JUDGE STEINBERG: So they didn't say, well, if  
6 Action is charging you \$11, we'll make it \$10.50 and you can  
7 save -- and you have 600 of these, so you can save a lot of  
8 money a month if you give us your business? You didn't do  
9 that?

10 THE WITNESS: We did not do that.

11 JUDGE STEINBERG: Do other companies in Dallas do  
12 that, to your knowledge?

13 THE WITNESS: The companies that are there in  
14 Dallas, the good ones, they would not. They would not do  
15 that. But, now, if I have a customer to come to me and say  
16 I'm not getting a good repeater site, I'm getting poor  
17 service and could I be on your system, we would consider  
18 him.

19 JUDGE STEINBERG: Even though you would taking him  
20 away from another company.

21 THE WITNESS: Yes, sir. We would wait for his  
22 approach to us to switch him over.

23 JUDGE STEINBERG: And that's the way you conducted  
24 your business.

25 THE WITNESS: Yes, sir.

1 JUDGE STEINBERG: Before your retirement.

2 THE WITNESS: Correct.

3 BY MS. LANCASTER:

4 Q Mr. Brasher, I believe you testified when being  
5 asked by Mr. Romney that 60 percent of DLB Metroplex's  
6 business including the 800, 900 and the T-band frequencies  
7 and including sales, service and installs, equipment and  
8 things that go along with those frequencies, that makes up  
9 about 60 percent of the business of DLB and Metroplex.

10 Do you recall testifying to that?

11 A Yes. Yes.

12 Q What percentage of the business is related to the  
13 T-band licenses?

14 A T-band license itself?

15 Q Yes, sir.

16 A Earlier, we talked about Allen. Did you want to  
17 break it down by site or by --

18 Q No, just the total figure.

19 A I have no idea exactly what that figure would be  
20 by itself. I would not know.

21 Q I'd like your best estimate.

22 A My best estimate would be I do not know,  
23 but percentage wise and such like this, I'd have no  
24 idea, Judy. I just know what the entire picture would  
25 look like.

1           Q     Mr. Brasher, how much income -- approximately  
2     how much income per month is grossed from the designated  
3     stations?

4           MR. ROMNEY:  Objection, Your Honor.  What's a  
5     designated station?

6           JUDGE STEINBERG:  Sustained.

7           BY MS. LANCASTER:

8           Q     Do you recall giving a deposition in November?

9           JUDGE STEINBERG:  Well, before we get to  
10    deposition, we have to have a question that wasn't answered  
11    the same way.

12          MS. LANCASTER:  Okay.

13          BY MS. LANCASTER:

14          Q     Do you know what I mean by designated stations?

15          JUDGE STEINBERG:  I do, but I don't think the  
16    witness or Mr. Romney knows.

17          BY MS. LANCASTER:

18          Q     Mr. Brasher, do you know what I mean?

19          A     I do not know.

20          Q     Let me show you the caption of the hearing.

21                For purposes of this question, Mr. Brasher -- hold  
22    on one second.

23          JUDGE STEINBERG:  Let's go off the record.

24                (A brief recess was taken.)

25          JUDGE STEINBERG:  Back on the record.

1 Say it again.

2 MS. LANCASTER: I withdraw that question,  
3 Your Honor.

4 BY MS. LANCASTER:

5 Q I believe that you testified that in addition to  
6 income received by DLB/Metroplex for the radio systems, the  
7 900 to 800, the T-band, operation of those systems, that you  
8 also maintained a large number of customer contracts or  
9 installs. Is that correct?

10 A Correct.

11 Q And that you also do repairs or radio equipment  
12 and installations of systems for government agencies that  
13 have their own repeaters.

14 A Correct.

15 Q And those have no connection to any of the  
16 licenses managed by DLB. Is that correct?

17 A That's correct.

18 Q They also have no connection to any of the  
19 stations operated by DLB, licensed to DLB, licensed to you,  
20 licensed to Patricia, or licensed to others and that you  
21 manage those stations.

22 MR. ROMNEY: Objection to the form of the  
23 question. Vague and ambiguous. Compound.

24 JUDGE STEINBERG: Rephrase it. I know what you're  
25 getting at and I think you can rephrase it.



1 MS. LANCASTER: I can't remember what the question  
2 was.

3 MR. PEDIGO: Paint's dry.

4 JUDGE STEINBERG: These systems that you have sort  
5 of maintenance -- I'll call them maintenance contracts,  
6 maintenance, installation service.

7 THE WITNESS: Yes, sir.

8 JUDGE STEINBERG: They operate from repeaters that  
9 aren't owned by you.

10 THE WITNESS: That's correct.

11 JUDGE STEINBERG: That's what you wanted to ask,  
12 right?

13 MS. LANCASTER: That was part of the question.

14 JUDGE STEINBERG: Okay. Now we get to the  
15 compound part.

16 BY MS. LANCASTER:

17 Q The installations that you do for customers, that  
18 is a separate function or separate operation of  
19 DLB/Metroplex, it's separate from the operation of the  
20 stations itself. Do you understand that question?

21 A The activities is separated?

22 Q Yes. DLB installs equipment for customers that  
23 you don't operate a station for that customer. Doesn't DLB  
24 do that?

25 A That's correct.

1           Q     Okay. DLB and Metroplex also repair equipment  
2     and/or radios for customers who do not have licenses managed  
3     or owned by DLB. Is that correct? For other people, for  
4     other customers. You repair their radio equipment, don't  
5     you?

6           A     If a customer just walks in and says I want a  
7     radio repaired? Is that what you're asking?

8           Q     Well, for companies, if a company needs radio  
9     repair service done on their radios that has nothing to do  
10    with any of the stations that you manage or that you own,  
11    you could still go repair their equipment, right?

12               MR. ROMNEY: Objection. Calls for speculation on  
13    the part of the witness.

14               JUDGE STEINBERG: Well, instead of saying you  
15    could, do you?

16               MS. LANCASTER: Right.

17               BY MS. LANCASTER:

18           Q     You have done that, haven't you?

19           A     We have. I'm sorry.

20               JUDGE STEINBERG: Okay. Let's see if we can  
21    sharpen up and not talk over each other.

22               BY MS. LANCASTER:

23           Q     You have done radio equipment repair for  
24    companies, other companies. Is that correct?

25           A     Correct.

1           Q     Okay. Is it fair to say that the majority of your  
2     income is derived from the maintenance of contracts and the  
3     installation of systems? When I say your, I mean  
4     DLB/Metroplex's income.

5           MR. ROMNEY: Objection to the form of the  
6     question. Vague and ambiguous. I mean, I don't know what  
7     system we're talking about.

8           JUDGE STEINBERG: Start again.

9           (Pause.)

10          BY MS. LANCASTER:

11          Q     Mr. Brasher, when did you notify your attorneys  
12     that O.C. Brasher was dead?

13          MR. ROMNEY: Objection. Calls for attorney-client  
14     privileged information, Your Honor.

15          MS. LANCASTER: Your Honor, I believe that the  
16     door was opened when Mr. Romney stood up and made an  
17     argument that Mr. Brasher had not received any assistance,  
18     he didn't have any counsel when he was preparing any of the  
19     responses to the FCC and when he was making his argument for  
20     admission of RB/PB-2.

21                 He said he's not a lawyer, he didn't consult a  
22     lawyer about any of this stuff, about whether or not -- and  
23     he said that he did not prepare --

24                 Mr. Romney said he didn't have an attorney help  
25     him prepare -- he elicited testimony that he did not have an

1 attorney help him prepare the assignment applications and we  
2 don't believe that to be true.

3 JUDGE STEINBERG: No, he testified that -- well,  
4 one assignment application was pointed to, it might have  
5 been the one O.C. Brasher, I don't remember, and you asked  
6 him is that your signature on the bottom and did you sign  
7 O.C. Brasher, did you date it, something like that. And  
8 then there was typed information above and you said did you  
9 supply that information or somebody said did you supply that  
10 information -- Mr. Romney said did you supply that  
11 information and Mr. Brasher said, no, that was typed in by  
12 my attorneys. And that doesn't waive attorney-client  
13 privilege.

14 MS. LANCASTER: No, sir, but Mr. Romney made a  
15 long argument to the Court in which part of his argument was  
16 that Mr. Brasher had not had legal counsel regarding the use  
17 of the term estate and that he didn't know -- he was just a  
18 layman and he didn't know and that's why I want to know when  
19 he told his attorney because in fact the majority of the  
20 time that this case has been pending he has been represented  
21 by an attorney and he did have legal representation and he  
22 could have easily gotten the information, a legal definition  
23 of whether or not he was the executor of an estate and that  
24 Mr. Romney specifically argued against that when he was  
25 questioning Mr. Brasher.

1 JUDGE STEINBERG: First, I have difficulty  
2 following your argument and I don't --

3 MS. LANCASTER: I believe he opened the door,  
4 Your Honor, and he waived the privilege by opening the door.

5 MR. ROMNEY: Your Honor --

6 JUDGE STEINBERG: It's not his to waive. That's  
7 number one.

8 MR. ROMNEY: It's not mine to waive, number one.  
9 Number two, anything that doesn't come out of this witness'  
10 mouth is not evidence.

11 JUDGE STEINBERG: I don't think the door was  
12 opened.

13 MS. LANCASTER: Your Honor, Mr. Romney elicited  
14 testimony from Mr. Brasher that he had no help.

15 JUDGE STEINBERG: That was when -- okay. We were  
16 talking about -- if I remember correctly, we were talking  
17 about the power of attorney --

18 MR. KNOWLES-KELLETT: No.

19 JUDGE STEINBERG: We weren't? What were we  
20 talking about? Refresh my recollection.

21 Mr. Kellett, you may speak. You may speak when  
22 you have a microphone.

23 MR. KNOWLES-KELLETT: Okay. He asked Mr. Brasher,  
24 now, you're not a lawyer; now, you didn't go to law school  
25 and you didn't have a lawyer helping you prepare any of

1     these applications.

2             MR. ROMNEY: That is not a question that I asked,  
3     sir. I ask him to show you on the record. You can run that  
4     tape back, I didn't ask that question. That is being made  
5     up out of whole cloth.

6             JUDGE STEINBERG: That was part of Mr. Romney's  
7     argument --

8             MR. KNOWLES-KELLETT: No, he was eliciting  
9     testimony.

10            MR. ROMNEY: I asked two questions.

11            JUDGE STEINBERG: The two questions were you are  
12     not a lawyer, you didn't go to law school.

13            MR. ROMNEY: Absolutely. That's it.

14            MR. KNOWLES-KELLETT: No, he also asked you have  
15     not had -- and a lawyer did not help you prepare these  
16     applications.

17            MR. ROMNEY: No.

18            JUDGE STEINBERG: Well --

19            MR. KNOWLES-KELLETT: And he said no. And the  
20     fact is --

21            JUDGE STEINBERG: No. Wait a minute. Wait a  
22     minute. These applications were the ones filed in 1996 that  
23     everybody is fighting about, the Sumpters' applications,  
24     O.C.'s.

25            Well, I don't remember and the objection is

1     sustained and let's move on. And if the transcript says  
2     something else, you can put it on your list of egregious  
3     mistakes that I've made and appeal it to the Commission.

4             I'm sure everybody is keeping a list of the  
5     egregious mistakes that I've made that they can appeal to  
6     the Commission. That's what the computer -- I hope you have  
7     a big enough hard drive.

8             MS. LANCASTER: I have nothing further,  
9     Your Honor.

10            JUDGE STEINBERG: Mr. Romney?

11            MR. ROMNEY: Yes, sir. Just a few.

12            JUDGE STEINBERG: You can call it continued  
13     questioning by Mr. Romney because it's in the nature of,  
14     I guess, recross/redirect, if we have to have a label for  
15     it.

16                                RECROSS-EXAMINATION

17            BY MR. ROMNEY:

18            Q     Mr. Brasher, you were just asked some questions  
19     about the radio business in the Dallas-Fort Worth metroplex  
20     and you started to give some answer about businesses going  
21     out of business lately and for some reason there may be a  
22     question on the record as to whether or not that testimony  
23     came in appropriate.

24            Mr. Brasher, tell the Court what the status of the  
25     two-way radio business is in Dallas right now.

1           A     Since I do know this, from the first of December,  
2     there has been three major friendly competitors who have  
3     given up their desire to be in the radio communication  
4     business. They have sold their frequencies and converted  
5     these over into a cell phone type industry who uses these  
6     for conversion over to a different type of radios.

7           Q     In your mind, Mr. Brasher --

8                     JUDGE STEINBERG: This was the first of December  
9     of what year?

10                    THE WITNESS: Year 2000.

11                    JUDGE STEINBERG: Last December?

12                    THE WITNESS: Yes. Last December. Yes, sir.

13                    BY MR. ROMNEY:

14           Q     In your mind, sir, talking about the customers  
15     that are currently being serviced with repeater service by  
16     DLB, in your understanding, is there a difference between  
17     the financial effect that it would have on those customers  
18     for somebody to come in and try to predatorily take them  
19     away from you as opposed to you being put out of business  
20     because you don't have any more FCC licenses?

21           A     Would you restate that again? I was following it  
22     and I lost it and I'm sorry.

23           Q     It's one thing, sir, isn't it, for a customer to  
24     be predatorily priced away --

25                    MS. LANCASTER: Objection.



1 JUDGE STEINBERG: Okay. The harm in letting you  
2 finish the question is that the objection is that it's  
3 leading and suggests the answer, otherwise I would say ask  
4 the question. So if you can rephrase it so that we get  
5 Mr. Brasher's words, I would appreciate it, so I guess the  
6 objection to the unasked question is sustained.

7 BY MR. ROMNEY:

8 Q You've lost customers to predatory type  
9 competitors?

10 A Yes, sir.

11 Q And do you have an understanding, do those  
12 customers when they make that decision to move, do they have  
13 costs that are incurred to change over to a new system?

14 A Yes, they do.

15 Q And when they are taken away by a predatory  
16 competitor, do they make that decision on their own to incur  
17 that cost?

18 A Yes, sir. They do.

19 Q If the FCC were to take away your licenses, are  
20 your customers going to have the choice as to whether or to  
21 incur those costs of changing over to another system?

22 A They would insist that we pay that difference, do  
23 it for them.

24 Q And then it would be an expense to change over to  
25 a competitor?

1           A     Definitely.

2           Q     Thank you.  You acknowledge for this Court that  
3     there are some predatory competitors in the Dallas-Fort  
4     Worth area?

5           A     Yes, sir.

6           Q     It's clearly not your desire to make their  
7     predation easier, is that right?

8           A     That's correct.

9                 JUDGE STEINBERG:  Try not to lead.

10           MR. ROMNEY:  Pardon?

11           JUDGE STEINBERG:  You can ask these same  
12     questions, get the same answer, without leading.  I think  
13     those were leading questions.  Yes, they were.

14           MR. ROMNEY:  Pass the witness, Your Honor.

15           JUDGE STEINBERG:  Mr. Pedigo?

16           MR. PEDIGO:  Nothing.

17           JUDGE STEINBERG:  Okay.  This completes your  
18     testimony, Mr. Brasher, unless you want to come in tomorrow  
19     morning and read the phone book up here or something.

20                 You are excused, but you are still under the  
21     sequestration order, so you shouldn't talk about your  
22     testimony with anyone other than your attorneys.  That  
23     includes your wife.

24           THE WITNESS:  Yes, sir.

25           MR. ROMNEY:  Your Honor, we would intend for

1 Mr. Brasher to be our corporate rep from here on out.

2 JUDGE STEINBERG: Sure. Yes. That's perfectly  
3 fine.

4 (The witness was excused.)

5 JUDGE STEINBERG: I do not want to start another  
6 witness right now. It is too late in the day and everybody  
7 is getting testy and it is going to be nasty.

8 MR. KNOWLES-KELLETT: We'd agree with the first  
9 one.

10 JUDGE STEINBERG: Pardon me?

11 MR. KNOWLES-KELLETT: We agree with the first  
12 part.

13 JUDGE STEINBERG: What, the too late in the day?

14 MR. KNOWLES-KELLETT: Yes.

15 MS. LANCASTER: The testy part.

16 JUDGE STEINBERG: The testy part was the second  
17 part.

18 MR. PEDIGO: They're fighting amongst themselves  
19 now.

20 JUDGE STEINBERG: Yes. No. I don't want to do  
21 it. And if the witness has to stay overnight, frankly,  
22 I don't care. I don't. I'm looking out for people inside  
23 the courtroom and myself and I think it would be much better  
24 if we all came in tomorrow morning after a good night's  
25 sleep and maybe we'll get the testiness out of us.

1           We will be in recess until 9:00 a.m. tomorrow.

2           (Whereupon, at 4:00 p.m., the hearing in the  
3   above-entitled matter was adjourned until Thursday, March 1,  
4   2001, at 9:00 a.m.)

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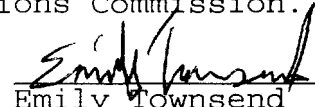
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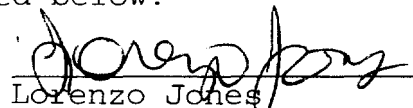
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